



# DISABILITY RIGHTS CENTER-NH

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To: Daniel Klein, IOD

From: Adrienne Mallinson, DRC-NH

RE: Feedback on NH Provider Assessment Pilot Draft

Date: April 30, 2015

Below are comments on the pilot assessment you provided this week. The comments are taken from examples in the CMS tools “Exploratory Questions to Assist States in Assessment of Residential Settings”; “Exploratory Questions to Assist States in Assessment of Non-Residential Home and Community-Based Service (HCBS) Settings”; “Guidance on Settings That Have the Effect of Isolating Individuals Receiving HCBS From the Broader Community”; and the CMS slidedeck, “Final Rule Medicaid HCBS”.

## 1. Choice of Setting

- Add a question: Do the setting options include non-disability-specific settings?
- Question 2: the federal guidelines expand on this question “Are individuals afforded opportunities to choose with whom to do activities in or outside the setting or are individuals assigned only to be with a certain group of people?” Recommend you add back in the latter half of the question, because it will be telling in many day programs.
- Question 3: more often than not, the individual needs to visit a setting in order to understand what it is. That needs to be clear in the question and not diluted as “visit/understand”. Recommend adding a separate question: Were individuals given the opportunity to visit this and other settings before selecting this setting?
- Add question: Do the setting options include the opportunity for the individual to choose to combine more than one service delivery setting in any given day/week (e.g., combine employment with non-work community activity)?

## 2. Participation in Activities

- Add questions: Are tasks and activities comparable to those of typical peers?
- Do individuals have access to materials to become aware of activities occurring outside of the setting?

- Do individuals talk about activities occurring outside of the setting?
- Do individuals participate in unscheduled community activities in the same manner as typical peers?

### 3. Community Participation

- Question 1: rephrase to make consistent with federal guidelines: "Do individuals regularly shop, attend religious services, schedule appointments, eat out with family and friends, etc., as they choose?"
- Question 4: rephrase to make consistent with federal guidelines: "Alternatively where public transportation is limited, are other resources provided for individuals to access the broader community, including accessible transportation for individuals with mobility impairments?"

### 4. Community Employment

- Add questions: Do individuals work in integrated community settings?
- Are individuals who want to work, provided opportunities to pursue employment in integrated community settings?

### 5. Choice of Housemate or Roommate

- Add question: Are married couples provided with a shared or separate bedroom and living accommodations by choice?

### 6. Own Schedule

- Question 1: rephrase to make consistent with federal guidelines: "Are individuals able to choose and control schedules consistent with their own needs and desires? For example, how is it made clear that the individual is not required to adhere to a set schedule for waking, bathing, exercising, activities, etc.? Can individuals identify preferred activities and participate when and where they choose?"

### 7. Access to Personal Funds

- No comments

### 8. Choice Related to Meals/Snacks

- These are at least 2 or 3 distinct questions. Remove the reference to "within limits set by an individual's physician or an approved plan" because it's misleading. Any modification to the setting has to be based on the least intrusive/restrictive method needed for each individual and include documentation of attempts to use less restrictive methods. See "Decision Making". The setting itself can't be uniformly modified on an assumption that all residents have or require an "approved plan".

## 9. Individual Needs

- Question 1: This is unclear. Are you asking if the setting has policies and procedures to ensure the individual is making an informed choice to be in that setting? If so, then it belongs in Choice of Setting. If you are asking if informed choices are supported within the setting, then it belongs in Decision Making. Probably needs to be both places.

## 10. Free[dom] from Coercion

- This is vague. What kind of complaint are you talking about? Rights violations? Restraints? Abuse and neglect?
- Add questions: Are individuals informed of their fundamental rights, treatment and service rights, and right to be free from restraint, seclusion, abuse, neglect, and exploitation?
- Are individuals prohibited from engaging in legal activities (e.g., voting, consuming alcohol, having sex) in a manner different from typical peers?

## 11. Role in Person Centered Service Plan

- Questions 1 & 2: clarify this – Are providers, family members etc., who are knowledgeable about the individual *and* chosen by the individual actively participating in developing plans?
- Is the individual participating in development of plans and can the individuals explain the process to develop and update the plan or to change HCBS services?

## 12. Access to Environment

- Questions 1 & 3: remove “Is access limited due to health and safety reasons and according to approved plans.” Any modification to the setting has to be based on the least intrusive/restrictive method needed for each individual and include documentation of attempts to use less restrictive methods. See “Decision Making”. The setting itself can’t be uniformly modified on an assumption that all residents have or require an “approved plan”.
- Add questions: Do individuals come and go at will? Is there a curfew or other requirement?

## 13. Physical Environment

- Add questions:
- Do individuals have privacy in their sleeping space and toileting facility?
- Can they lock bedroom and bathroom doors? Do staff have to knock and receive permission to enter bedroom or bathroom?
- Is furniture in the sleeping or living space arranged as individuals prefer?
- Are personal items present and arranged as individuals desires?
- Do furnishings and décor reflect individual choice and taste?
- Does the setting support individual independence and preference? (e.g., do individuals have full access to kitchen, cooking facilities, laundry, comfortable seating?).

#### 14. Access to Community

- Question 2: delete the word “institutional” – inpatient is sufficient for the feds, and “institutional” just begs the question.
- Consider adding the third Presumed Not question: “Does the setting have the effect of isolating the individual from the broader community of individuals not receiving services?” Would be useful to see the range of responses.
- Add questions: Do individuals receiving waiver services live in a different area of the setting than those not receiving waiver services?
- Is the setting designed specifically for people with disabilities, or for people with a certain type of disability?
- Are the individuals in the setting primarily or exclusively people with disabilities and on-site staff/providers?
- Is the setting designed to provide people with disabilities multiple types of services and activities on-site? (e.g., day, residential, therapeutic, medical, social, recreational, etc.).
- Does the setting use or authorize restraint or seclusion?
- Do individuals in the setting have limited interaction with the broader community?

#### 15. Health Information

- No comments

#### 16. Dignity and Privacy

- Is there a secure place to store personal belongings?
- Are there cameras present in the setting?

#### 17. Decision Making

Add:

- Does the setting or program policy require that the individual and/or representative grant informed consent prior to the use of restrictive interventions and document these interventions in the person-centered plan?
- Does the setting ensure that individual behavioral needs are specific to the individual and not the same as everyone else in the setting and/or restrictive to the rights of every individual receiving support within the setting?
- Does documentation note if positive interventions and supports were used prior to restrictive modifications? Are less intrusive methods of meeting needs that were tried documented?
- Does the plan include a description of the condition that is directly proportional to the assessed need, data to support ongoing effectiveness of the intervention, time limits for periodic reviews to determine the ongoing necessity of the modification, informed individual consent, and assurance that the intervention will not cause harm?

## 18. Communication

Add

- Do staff routinely ask individuals about their needs and preferences?
- Is individual choice facilitated in a manner that leaves individuals feeling empowered to make decisions?
- Do individuals have access to make and receive private telephone calls, texts, and email at their convenience and preference?
- Do individuals have the ability to receive and talk to guests privately in a comfortable area?
- Is communication conducted in a language that the individual understands? (e.g., are provisions made for non-English speakers, Deaf individuals who use ASL?)

## 19. Settings Agreement

- For the sake of clarity, because it is applicable to residential settings, remove “If applicable” and replace with “For residential settings”.
- Add: Does the written residency agreement include language that provides protections and eviction process and appeals comparable to those provided under landlord-tenant law?